

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 732 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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STATE OF GUJARAT**Versus****RANJITSINH HARISINH CHAUHAN & Other**

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Appearance :

MR KC SHAH APP for Appellant

None for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1.Heard learned APP Mr.K.C.Shah for the
appellant - State.

2.We along with learned APP thoroughly have
gone through the judgment and order, which is
impugned in this acquittal appeal and other
necessary papers. The present opponents were
charged for the offences punishable under
Sections 307, 504 and 114 of the Indian Penal
Code and under Section 25(c) of the Arms Act
as well as under Section 135 of the Bombay
Police Act. Both the opponents came to be
acquitted for the charges levelled against
them by judgment and order dated 21.02.2003
delivered by the Joint District Judge and
Additional Sessions Judge, 2nd Fast Track

Court, Dahod in Sessions Case No.281/1998. The incident has taken place on 10.09.1997 at about 7.30 p.m. The accused, as alleged rushed towards the complainant, abused him and threatened that why police complaint was given by the complainant before five months against them when nobody had dared in the past to file such complaint. Thereafter, both the accused from the roof of their respective house fired gun while complainant concealed himself in his own house, but the wife of the brother of the complainant Lalitaben Madhusingh and nephew Hitesh Devisingh, who were on backyard of the house of the complainant were injured by palates of such firing. At Dahod Rural Police Station, complainant gave FIR at 0.30 hours, which was registered as C.R.No.I-97/1997 under the above said offences.

3. On submitting charge-sheet, about 17 witnesses were examined by the prosecution,

while voluminous documents were also produced. While going through the papers carefully and evidence recorded as well as the reasoning of the trial Court, it becomes crystal clear that from the evidence of so-called injured and the complainant, material contradictions surface so as not to place reliance on their testimony. Learned trial Judge has elaborately discussed this aspect in paragraph - 9 of the judgment, while dealing with issues No.1, 2 and 3. In addition to this, it could not be proved by the prosecution beyond reasonable doubt that the injury caused to the palates came to be fired from the muddamal gun and, therefore, the learned Judge came to the conclusion that the presence of the eye witnesses becomes doubtful and after following a decision of the Apex Court, came to the conclusion that when the eye witnesses were not credible and their presence was doubtful, it was not possible to convict the accused on the evidence of the prosecution, which was

recorded before the Court.

4. It is the cardinal principle that while dealing with the acquittal appeal when two views are possible from the evidence recorded, only because second view is possible, the view taken by the trial Court cannot be discarded unless while going through the reasoning for the acquittal, if it is found that, the conclusion arrived at by the trial Court is not supported by the evidence on record and that the same is so perverse, that could not stand to reason by standard of a prudent person. Therefore, when reasonings given by the trial Judge are sound and when we do not find any perversity in appreciation of the evidence, merely from the evidence recorded, second view is possible, the conclusion arrived at cannot be upset, especially in the appeal against the acquittal.

5. In the above view of the matter, this appeal against the judgment and order of acquittal stands dismissed summarily.

[J. R. VORA, J.]

[SHARAD D. DAVE, J.]

(vijay)